BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

AMY B. ALMAREZ	)	
Claimant	)	
VS.	)	
	)	Docket No. 259,127
EVCON INDUSTRIES	)	
Respondent	)	
AND	)	
	)	
AMERICAN HOME ASSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent appeals Administrative Law Judge Nelsonna Potts Barnes' November 1, 2000, preliminary hearing Order.

ISSUES

This is a claim for bilateral upper extremity injuries allegedly resulting from claimant's each and every day repetitive work activities performed while working for the respondent from July 24, 2000 through August 21, 2000. The Administrative Law Judge found the claim compensable and granted claimant's request for medical treatment with orthopedic surgeon Tyrone Artz, M.D., and if taken off work, temporary total disability benefits.

On appeal, respondent contends claimant failed to prove she suffered an accidental injury arising out of and in the course of her employment with respondent. Respondent argues claimant's bilateral upper extremity injuries and current need for medical treatment are the result of a preexisting carpal tunnel syndrome condition not permanently aggravated or accelerated by claimant's work activities while employed for a very limited period of time by respondent.

Claimant, on the other hand, requests the Appeals Board to affirm the preliminary hearing Order. Claimant contends her repetitive assembly line work activities while employed by the respondent permanently aggravated her preexisting bilateral carpal tunnel syndrome condition, resulting in a compensable accidental injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the arguments contained in the parties' briefs, the Appeals Board finds the preliminary hearing Order should be reversed.

This claim was consolidated for preliminary hearing purposes with claimant's claim against Borg-Warner Staffing and Kemper Insurance Company, Docket No. 259,263. But this appeal is only from the Administrative Law Judge's November 1, 2000, preliminary hearing Order entered in Docket No. 259,127, involving respondent, Evcon Industries.

Claimant started working for Borg-Warner, a temporary employment agency, on July 25, 2000. Claimant was assigned by Borg-Warner to work on the assembly line for respondent, Evcon Industries, and as announced by Evcon's attorney at the preliminary hearing, is now known as York International. Respondent is in the business of manufacturing air conditioners and heating units for mobile homes.

Claimant described her assembly line duties as requiring her to use both of her hands repetitively performing job duties of drilling holes into metal heating panels with a 5-6 pound drill gun and assembling the heating panels together by shooting screws into the drilled holes.

Claimant was employed by Borg-Warner and assigned to respondent from July 25, 2000 through August 11, 2000. The first day, July 25, 2000, was a day of orientation and claimant did not do any assembly line work. Claimant then started working on the assembly line on July 26, 2000, missed one day of work the first week and worked until August 11, 2000, for a total of 12 working days.

Claimant's regular work shift was from 5:30 a.m. until 2:30 p.m. But claimant's supervisor, Harvey Stewart, testified the assembly line usually did not start up until about 7:30 a.m. and it shut down at 2:00 p.m.

Claimant was hired as a full time employee for respondent performing the same assembly line work on Monday, August 14, 2000. On the first day claimant was employed by the respondent she did not perform the regular assembly work but attended orientation for new employees. On August 15, 2000, claimant performed a full day of assembly line work for approximately 6.5 hours. The next day, claimant worked only until 9:00 a.m. or 1.5 hours because she became sick from the extreme heat in the plant. Claimant rested and cooled off in the nurse's office and then was sent home.

Claimant did not work on August 17, 2000. She returned to work on August 18, 2000, but was placed in an accommodated job within upper extremity work restrictions imposed by claimant's personal physician, Sam Heck, D.O. Claimant returned to work on Monday, August 21, 2000, for a scheduled physical examination by

respondent's in-plant nurse. After the nurse completed the physical examination she imposed the same work restrictions on claimant as Dr. Heck had imposed.

Respondent notified claimant that it could not accommodate those restrictions and advised claimant she should resign. Claimant then did resign from her employment with the respondent on August 21, 2000. Between August 14, 2000, the first day claimant was employed by the respondent, and August 21, 2000, the last day claimant was employed by respondent, she only performed approximately 11.5 hours of assembly line work.

Claimant's supervisor, Mr. Stewart, also described claimant's assembly line job duties and accompanied his description with pictures of a woman performing those job duties that were admitted into evidence at the preliminary hearing. The duties Mr. Stewart described required the employee to use both of her hands, but generally represented work that required little physical exertion such as placing labels on heating unit panels, placing insulation on heating unit panels and wiring heating unit panels. Mr. Stewart admitted that claimant did use a drill gun to drill holes but claimant only drilled holes with a drill gun and shot screws for only one shift out of all the shifts she worked while employed by both Borg-Warner and respondent.

The medical records of claimant's family physician, Dr. Heck, were admitted into the preliminary hearing record. Claimant first was treated by Dr. Heck on March 20, 2000, for low back pain. While claimant was undergoing treatment for the low back pain, on April 30, 2000, she fell at a grocery store. On May 19, 2000, claimant saw Dr. Heck with not only low back complaints but also left arm pain. On May 30, 2000, Dr. Heck's medical record also notes right arm pain. Then, during claimant's June 27, 2000 visit, Dr. Heck notes that claimant relates her left arm pain to her fall at the grocery store.

After claimant completed her first day of assembly line work, on July 26, 2000, she saw Dr. Heck for her continuing back pain. At that time, Dr. Heck also noted that claimant complained of her left arm tingling and falling asleep. Claimant testified that after only one day of assembly line work on July 26, 2000, she complained to Dr. Heck that both of her hands were swollen, painful, numb and tingling. Those symptoms involved claimant's hands and lower arms, where her previous arm complaints resulting from her fall at the grocery store, involved her upper arms and shoulders.

Although claimant testified that as she continued to perform the repetitive hand intensive assembly line work her hand symptoms worsened, claimant failed to notify either Borg-Warner or respondent of those symptoms until August 17, 2000. At that time, claimant had been employed by the respondent only since August 14, 2000. After claimant left work because of the heat on August 16, 2000, she spoke to Dr. Heck over the telephone. At that time, claimant not only told Dr. Heck about the heat problem but also told Dr. Heck about her hand symptoms. As a result, Dr. Heck, in a release to return to work dated August 17, 2000, restricted claimant's work activities because of her hand

symptoms to "No Right hand grips and Frequent Posture Position Changes". The doctor indicated the reason "she missed work due to pain & symptoms on 8/17/00."

Claimant's supervisor, Mr. Stewart, testified that claimant brought the return to work slip from Dr. Heck to him on August 18, 2000. Mr. Stewart testified that was the first time he had any knowledge that claimant had a problem with her hands as a result of the assembly line repetitive work activities.

On August 21, 2000, the last day claimant worked for respondent, claimant saw orthopedic surgeon, Michael P. Estivo, D.O. Claimant had been referred to Dr. Estivo by Dr. Heck for claimant's continuing low back pain. During that first visit, claimant also complained of bilateral arm pain and numbness. As a result of those complaints, Dr. Estivo ordered claimant to undergo an EMG/NCT study. This study was completed on September 1, 2000. Results of the study determined that claimant had mild ulnar nerve entrapment across the right elbow with bilateral carpal tunnel syndrome, greater on the right than the left.

Respondent contends claimant failed to prove through her testimony or through the medical records admitted into evidence at the preliminary hearing that the very short period of time claimant actually performed assembly line work activities while working for the respondent either permanently aggravated or accelerated claimant's preexisting bilateral carpal tunnel syndrome condition. Claimant argues that her hand symptoms worsened each and every day she performed the repetitive assembly line job duties. This worsening occurred also during the limited time she was employed by the respondent. Accordingly, claimant argues that the Administrative Law Judge was correct and respondent is responsible for providing claimant with workers compensation benefits.

It is well established in Kansas that in a workers compensation case, when a work related accident aggravates or accelerates a preexisting condition, the accidental injury is compensable.[1] Also, medical testimony is not essential to the establishment of the existence of the nature and extent of claimant's disability.[2]

But the Appeals Board concludes, based on the evidence presented to date, that claimant has failed to prove the limited period of time that she performed the repetitive assembly line duties while employed by the respondent, permanently aggravated or accelerated claimant's preexisting bilateral carpal tunnel syndrome condition. The preliminary hearing record does not contain a medical opinion on causation. Although not necessary, such an expert opinion would in this case be helpful, because of claimant's

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[1] *See* Claphan v. Great Bend Manor, 5 Kan. App. 2d 47, 611 P.2d 180, *rev. denied* 228 Kan. 806 (1980).

[2] *See* Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991).

limited work exposure while employed by the respondent. Additionally, the evidence is conflicting as to the actual description of the assembly line job duties and to what extent of physical exertion claimant was required to exhibit to perform those job duties.

Therefore, at this point in the proceedings, the Appeals Board concludes that the preliminary hearing Order should be reversed and claimant is denied her request for preliminary compensation benefits.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but are subject to modification upon a full hearing of the claim.[3]

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Nelsonna Potts Barnes' November 1, 2000, preliminary hearing Order should be reversed and claimant is denied her request for preliminary compensation benefits.

IT IS SO ORDERED.

Dated this ____ day of January 2001.

BOARD MEMBER

c: E. L. Lee Kinch, Wichita, KS
William L. Townsley III, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director

[3] *See* K.S.A. 2000 Supp. 44-534a(a)(2).